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NOTES OF CASES.

PROCESS—COMMENCEMENT OF ACTION BY NOTICE—SEC. 3211, VA. CODE ANNO.—CONFORMITY TO STATE PRACTICE.—In *Leas & McVitty v. Merriman* (C. C., W. D. Va.), 132 Fed. 510, it was held:

Rev. St., sec. 911 (U. S. Comp. St. 1901, p. 683), which provides that "all writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue and shall be signed by the clerk thereof," does not apply to a notice given under Code Va. 1887, sec. 3211, authorizing a judgment on a contract to be obtained on motion after 15 days' notice to defendant, and the practice thereunder, which is for the plaintiff or his attorney to sign the notice and serve the same on defendant, such a notice not being a "process issuing from the court"; and under the conformity act (Rev. St., sec. 914 [U. S. Comp. St. 1901, p. 684]) an action may be instituted by such a notice in a federal court in Virginia in accordance with the state practice.

The court says that it seems that notices in ejectment under sec. 2732, Va. Code Anno., and notices of motion for judgment under sec. 3211 are not "processes" within the meaning of Rev. St., sec. 911, citing *Whitney v. Blackburn*, 17 Or. 564, 21 Pac. 874, 11 Am. St. Rep. 857. See, also, *Union Central Life Ins. v. Pollard*, 94 Va. 146, 151, 26 S. E. 421; 36 L. R. A. 271, Am. St. Sep. 715.

RAILROADS—RELATION TO EMPLOYE OF EXPRESS COMPANY—CONTRACT FOR CARRIAGE.—In *Chicago & N. W. R. R. Co. v. O'Brien* (C. C. A., Eighth Circuit), 132 N. W. 593, it was held:

An express messenger, while riding in a car furnished by a railroad company to the express company by which he is employed, under a contract by which the employees therein are carried free, occupies a relation to the railroad company analogous to that of one of its own employees, and the care which such company owes him in respect of its track, engine, cars, and the operation of its train is measured by that which it owes to those in its immediate service, citing *R. R. v. Voight*, 176 U. S. 498, 20 Sup. Ct. 385, 44 L. Ed. 560.

PARENT AND CHILD.—A child is held in *McKelvey v. McKelvey* (Tenn.), 64 L. R. A. 991, to have no right of action to recover damages against his father and stepmother for cruel and inhuman treatment inflicted upon him by the latter with consent of the former.

BANKRUPTCY—JURISDICTION—ADVERSE CLAIM—SUMMARY PROCEEDINGS.—A bankruptcy court has jurisdiction to determine in the first instance whether an asserted adverse claim to property alleged to be part of the bankrupt's estate is colorable or actual.

Where such claim is merely colorable it should be set aside and the

claimant summarily directed to deliver the property to the trustee, but if the claim is asserted in good faith, substantiated by verified pleadings or oral testimony, the remedy of the trustee for the recovery of the property is, by a plenary suit, instituted in the proper tribunal. *In re Kane* (U. S. D. C., N. D. of N. Y.), 12 Am. B. R. 444.

BANKRUPTCY—DISCHARGE—FAILURE TO APPLY FOR OR REFUSAL TO GRANT—RES ADJUDICATA—SUBSEQUENT BANKRUPTCY TO SECURE—DISMISSAL OF PETITION AFTER ADJUDICATION.—A failure of the bankrupt to apply in due time for, or a refusal by the court to grant, a discharge from debts provable in proceedings under one petition in bankruptcy, renders the question of the right of the bankrupt to a discharge from those debts in a proceeding under a subsequent petition *res adjudicata*.

A subsequent proceeding in bankruptcy for the sole purpose of obtaining a discharge which a prior proceeding has conclusively determined that the bankrupt is not entitled to presents no ground for relief, is vexatious and futile, and cannot be lawfully maintained.

The District Court has power to dismiss such a proceeding, as soon as it learns its real purpose, under section 2, subd. 15, Bankr. Act July 1, 1898, chap. 541, 30 Stat. 546 (U. S. Comp. St. 1901, p. 3421), although this is after an adjudication in bankruptcy. *Kuntz v. Young* (C. C. A., Eighth Circuit), decided July 28, 1904, 12 Am. B. R., 505.

NEGLIGENCE—HIDDEN DEFECT.—The manufacturer of a buggy, who sells it to a municipal corporation for the use of one of its employees, representing it to be strong and in good condition, but knowing that it is in fact defective, the defect being so concealed that the purchaser cannot detect it, is held, in *Woodward v. Miller* (Ga.), 64 L. R. A. 932, to be liable in damages to the person whose use of the buggy was contemplated at the time of the sale, for injuries caused by such defect.

SALES—DELIVERY—PASSING OF TITLE—CONVERSION.—In *Wesoloski v. Wysoski*, 71 N. E. 982, the Supreme Judicial Court of Massachusetts held:

Where plaintiff sold defendant onions under an agreement that they were to be screened to remove the unmarketable ones, and weighed, and paid for on a certain date, title did not pass before they were screened, weighed and paid for, there being no evidence that it was intended that title should pass before this was done. A sale of the onions by defendant before they were screened weighed, or paid for was of itself a conversion, citing *Riddle v. Varnum*, 20 Pick. 280; *Sherwin v. Mudge*, 127 Mass. 547; *Robinson v. Way*, 163 Mass. 212, 39 N. E. 1009; *Baker v. Lothrop*, 155 Mass. 376, 29 N. E. 643.

WITNESSES—COMPETENCY—HUSBAND AGAINST WIFE—SEC. 3346A VA. CODE ANNO.—A husband may testify against the wife concerning an assault upon